IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Vijay Singh alias Bijjo
Vs.
State and anr.

S.B. CRIMINAL REVISION PETITION NO.62/2003
under Section 397/401 Cr.P.C.

Date of Order :- November 7, 2006.

PRESENT
HON'BLE MR.JUSTICE HARBANS LAL

Mr. Biri Singh with
Mr. Kamlendra Sihag for the petitioner.
Mr. Arun Sharma P.P. for the State.
Mr. Anil Upman for non-petitioner No.2.

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BY THE COURT :-

This petition under Section 397/401 Cr.P.C. calls in question the order dated 21/12/2002 of the learned Additional District and Sessions Judge (Fast Track) No.3, Bharatpur whereby the application filed by Smt.Shyamwati u/S.319 Cr.P.C. has been allowed and the petitioner has been ordered to be arraigned as an additional accused in the sessions case pending trial before the aforesaid court to face trial on charges for offences u/Ss.376, 306 and 457 IPC.

2) The relevant facts are that one Kailash lodged a written report at PS Sewar on 4/8/2002 about an incident that allegedly took place on the intervening night of 1.2/8/2002 at 1.30 a.m. whereupon formal First Information Report No.288/2002 came to be registered for offences u/Ss.376, 306 and 457 IPC. It was alleged in the aforesaid report that Kumari Seema was sleeping in the house on the fateful night of the occurrence. Co-accused Ramveer Singh and petitioner Vijay Singh alias Bijjo entered into the house. They committed rape with her

after putting a gaug in her mouth. His wife Smt.Shyamwati was awakened on hearing noise, caught hold of Ramveer Singh and Vijay Singh. They started beating her by legs and fists. On hearing hue and cry Mahaveer, Chanda Singh and Badan Singh came there. On seeing them they ran away from there. Feeling ashamed and humiliated by this nefarious act of the accused, Kumari Seema consumed poison. She was taken to the hospital where her statement was recorded by the police. She ultimately died in the hospital.

3) During the course of investigation, co-accused Ramveer Singh was arrested and after completion of investigation charge-sheet was filed against him and he pleaded not guilty to the charges framed against him. So, the prosecution examined 15 witnesses. Thereafter, an application u/S.319 Cr.P.C. was filed by Smt.Shyamwati for arraigning petitioner Vijay Singh as an additional accused which was allowed by the impugned-order. Hence, this revision petition challenging the said order.

4) It is contended that Kumari Seema, the deceased could not disclose the name of the accused persons in her Parcha Bayan. According to her, only one miscreant entered into her house who belongs to her village and still she did not know his name. The allegations levelled in the FIR lodged by Kailash are contradictory to the aforesaid statement of Kumari Seema. It is, therefore, urged that the learned court below has committed error in not considering the fact that her statement was recorded under threat or duress and the FIR was lodged after an inordinate delay of 3 days. There is no evidence on record to show that petitioner entered into the house of the complainant. Smt.Shyamwati has not made any allegation of rape with Kumari Seema by co-accused

Ramveer Singh. According to the learned counsel, the application has been made at a very belated stage after recording of the statements of 15 witnesses. The trial court was not under any legal obligation to arraign petitioner as an additional accused especially when there was no prospect of his being convicted for the alleged offences.

5) Learned Public Prosecutor as well as learned counsel for the complainant have supported the impugned-order. According to them, there is ample material on record and the petitioner has been rightly arraigned as an additional accused to face trial alongwith co-accused.

6) I have carefully considered the rival submissions made at the bar and have perused the impugned-order as well as statements of 15 witnesses examined during the trial on the basis of whose evidence petitioner has been arraigned as an additional accused.

7) Satveer PW-2, Amar Singh PW-3 and Guddi wife of Satveer PW-5 have been declared hostile by the prosecution but as observed by the learned court below they appear to be closely related to one or the other accused persons.

8) Smt.Shyamwati PW-8 who is wife of complainant Kailash has clearly stated that petitioner Vijay alias Bijjo participated in the offence alongwith Ramveer Singh who was committing rape with her daughter and petitioner was standing near the Charpai.

9) Chanda Singh PW-9 has stated that he had seen Vijay Singh alias Bijjo and Ramveer Singh running towards jungle and Shyamwati told him that Ramveer Singh had committed rape with Kumari Seema while Vijay Singh was standing there.

10) Mahaveer PW-10 and Badan Singh PW-11 have stated that they had also seen Ramveer Singh and Vijay Singh running after scaling wall of the house of Kailash. Kumari Seema was verging.

11) The F.S.L. Report Exh.P.10 indicates that there was human semen on the underwear and vaginal swab and smear of Kumari Seema. Human semen was also detected in the underwear of Ramveer Singh. Dr.Bane Singh PW-6 has testified that sexual intercourse was committed with Kumari Seema before her death and she died on account of consuming aluminium phosphite.

12) Learned trial court has considered not only the entire evidence that had come on record but also authorities cited at the bar. The approach of the learned trial court cannot be found fault with. It is well-settled that at the stage of exercising the extraordinary powers u/S.319 Cr.P.C. the court has not to minutely analyse and appreciate the evidence on record but has to see whether there is prima-facie evidence on record indicating the involvement of the persons sought to be arraigned as the additional accused in the alleged offences.

13) It has been observed by the Hon'ble Apex Court in **Lok Ram Vs. Nihal Singh and another : 2006(ACR) 632** that the trial court has undoubted jurisdiction to add any person not being an accused before it to face trial, if the Court is satisfied at any stage of the proceeding on the basis of the evidence adduced that person who not being an accused should face trial together with accused already facing trial. The court can exercise this extraordinary power suo motu or on an application by some one including accused. Though, this power is discretionary and the court is not under any compelling

duty to proceed against other persons but this power must be exercised judicially taking into consideration the facts and circumstances of the case. The application cannot be rejected simply on the ground that the complainant is an interested witness and sufficient ground did not exist.

14) In the instant case, learned court below has properly excercised the discretion in view of the evidence and other materials on record by arraigning the petitioner as an additional accused in this case to face trial alongwith co-accused already facing trial. No valid ground to interfere in the impugned-order in exercise of the limited revisional jurisdiction of this Court is made out.

Hence, this petition u/S.397 r/w. S.401 Cr.P.C. having no merit and substance deserves to be and is hereby dismissed.

(HARBANS LAL), J.

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